IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1131 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

==========

GUJ. STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
YAKUB ISSA RUWALA & 3 - Defendant(s)

==========

Appearance :
MR MD PANDYA for Appellant(s) : 1,
MR SK BUKHARI for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2 - 3.
MR PV NANAVATI for Defendant(s) : 4,

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/07/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal (Main), Bharuch passed in M.A.C.P. No.301 of 1982 dated 29.06.1985.

2.0 The brief facts of the case are that on the date of alleged accident, present opponent No.1 was traveling as a pillion rider on a motor cycle driven by one Dr. Issa Mohmed Ibrahim which

met with an accident with the bus driven by present opponent No.2 and owned by present appellant. On account of the said accident, opponent No.1 received serious bodily injuries. Therefore, he filed a petition claiming an amount of Rs.60,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Learned Advocate for the appellant has submitted that the Tribunal has committed an error in not properly applying the principles governing determination of liability for negligence. He has further submitted that the Tribunal ought not to have awarded Rs.22,500/- under the head of loss of future income.

4.0 On the other hand learned Advocate for the opponent No.1 has supported the order of the Tribunal and has contended that the impugned

order has been passed after taking into consideration all the facts and circumstances of the present case, and hence, no case is made out calling interference of this Court.

5.0 Heard. Opponent No.1 in his deposition (Exh.66) has stated that on the day of accident he was coming from Bharuch riding on a motorcycle as a pillion rider and when motorcycle crossed the road and took turn towards right hand for going to village Zangar, at that time he saw a bus driven by opponent No.2 stopped to drop some passenger and then it suddenly took a turn towards Zangar, on account of which the accident in question took place. However, opponent No.2 vide his deposition Exh.91 has controverted the story put forward by opponent No.1. According to him, for crossing the road he had slowed the bus and had given a signal for turning and did not stop the bus as alleged by the opponent No.1. However, on perusal of written statement filed by opponent No.2-himself it clearly transpires that

before taking turn towards Zangar village the bus in question stopped to drop some passengers. Therefore, the Tribunal came to the conclusion that there was negligence on the part of the driver of the motorcycle to the extent of 10 per cent and 90 per cent on the part of opponent No.2. Hence, the Tribunal is justified in holding that opponent No.1 is entitled to compensation.

5.1 It may be noted that under the head of loss of future income, the Tribunal has awarded an amount of Rs.22,500/-. The said figure has been arrived at by the Tribunal by taking yearly income at Rs.30,000/- from agriculture and deducting 5 per cent disability sustained by the opponent for the body as a whole from the said amount and by applying a multiplier of 15, i.e. [(Rs.30,000 – 5% disability) = Rs.1,500/- monthly loss; (Rs.1500 X 15) = 22,500. The opponent No.1 has stated that on account of the disability he had to employ a servant to take care of his agricultural work. From the above, it can be

said that work of the opponent No. 1 is of supervisory nature. Therefore, the Tribunal ought to have taken 1/3 of his total income from agriculture while awarding amount under the head of future loss of income. Opponent No.1, hence, shall be entitled for an amount of [(Rs.30,000/ 1/3) = Rs.10,000/ yearly income from agriculture; (Rs.10,000 – 5% disability) = Rs.500/- yearly loss; (Rs.500 X 15 years) = Rs.7,500/-. Hence, under the head of future loss of income the opponent No.1 shall be entitled to Rs.(22500 -15000) = Rs.7,500/- only. Therefore, after deducting excess amount from loss of future income, the opponent No.1 shall be entitled for in all an amount of Rs.(36,185 – 15000) = Rs.21,685/- towards compensation.

6.0 In the result, the appeal is partly allowed. The opponent No.1 shall be entitled to an amount of Rs.21,685/- towards compensation. The remaining amount will be refunded to the appellant-Transport Corporation. The judgment and

award of the Motor Accident Claims Tribunal (Main), Bharuch passed in M.A.C.P. No.301 of 1982 dated 29.06.1985 is modified to the aforesaid extent. Rest of the judgment and award is confirmed. No order as to costs.

(K.S. Jhaveri,J.)

Umesh/